1634 Eye Street, NW Suite 1100 Washington, DC 20006

June 3, 2011

Marlene Dortch Secretary Federal Communications Commission 445 12th Street, SW Room TW-A325 Washington, DC 20554

Re: Notice of Ex Parte Presentation in GN Docket No. 09-191, *Preserving the Open Internet*, and WC Docket No. 07-52, *Broadband Industry Practices* 

Dear Ms. Dortch:

On June 1, 2011, David Sohn, John Morris, Patrick McKay, and Josephine Wolff of the Center for Democracy and Technology (CDT); John Bergmayer of Public Knowledge; and Parul Desai of Consumers Union met with Deborah Broderson, Lynn Ratnavale, and Ellen Satterwhite of the Consumer and Government Affairs Bureau; James Miller, Walter Johnston, and Douglas Sicker of the Office of Engineering and Technology; Jordan Usdan, Wireless Telecommunications Bureau; Zachary Katz of the Office of the Chairman; and Jonathan Zittrain, FCC Distinguished Scholar. The topic of the meeting was the transparency requirements adopted by the Commission in its December 2010 *Open Internet Order* (FCC 10-201, 25 FCC Rcd 17905).

During the meeting, participants discussed the possibility of the FCC issuing interim additional guidance regarding how broadband Internet access providers might comply with the transparency requirements, particularly with respect to network performance. John Morris of CDT stated that it seems reasonable for the FCC to provide interim guidance on performance disclosures while the Commission in other proceedings continues to consider questions relating to broadband performance metrics and data. Mr. Morris also suggested that in long run, the FCC should promote an environment where end users have the ability to test the actual performance of their broadband services. John Bergmayer of Public Knowledge expressed concern that if broadband providers are allowed disclose performance data in the form of national averages in some instances and local averages in others, they might "cherry pick," offering local detail only when favorable and thus skewing the overall disclosures. David Sohn and Parul Desai suggested that FCC guidance could be applicable to both wireline and wireless providers, since transparency requirements apply to both and since the non-binding nature of the interim guidance presumably would leave carriers free to develop alternative means of compliance as necessary.

If you have any questions, or require further information, please do not hesitate to contact me directly. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,

/s/

David Sohn Center for Democracy & Technology